

Questions and Information Concerning Issues No. 5-8

5. Collection responsibility determination

Should the marketplace facilitator/provider and the marketplace seller, under certain circumstances (such as when the marketplace seller has already been collecting the tax, etc.), be able to contractually agree which party has the sales/use tax collection obligation?

The following states have included provisions in their marketplace facilitator/provider collection statutes permitting the marketplace facilitator/provider and the marketplace seller to negotiate which party has the collection obligation: ME, MN, NV, NJ.

Minnesota 2019 HF 5:

Except as provided in paragraph (d), a marketplace provider maintaining a place of business in this state and a marketplace provider not maintaining a place of business in this state who facilitates retail sales in Minnesota or to a destination in Minnesota shall collect sales and use taxes and remit them to the commissioner under section 297A.77 unless:

(1) the retailer provides a copy of the retailer's registration to collect sales and use taxes in this state to the marketplace provider; and
(2) the marketplace provider and retailer agree that the retailer will collect and remit the sales and use taxes on marketplace sales facilitated by the marketplace provider.

(c) Nothing in paragraph (b) shall be construed to interfere with the ability of a marketplace provider and a retailer to enter into an agreement regarding fulfillment of the requirements of this chapter.

Should the state tax agency have the authority to waive the marketplace facilitator/provider collection requirement in certain limited circumstances? Would such an authorization raise any “unlawful delegation” concerns?

Minnesota does not have the authority to waive collection requirements

*beyond the 60 days provided for in the small seller exception threshold.
Remote sellers and out of state marketplaces are not required to collect until they exceed the small seller exception.*

Should marketplace facilitator/provider collection requirements exclude certain services?

Remote sellers and marketplace facilitators must collect sales tax on taxable retail sales that exceed the small seller exemption.

MN 297A.61 subd 3. (a) "Sale" and "purchase" include, but are not limited to, each of the transactions listed in this subdivision. In applying the provisions of this chapter, the terms "tangible personal property" and "retail sale" include the taxable services listed in paragraph (g), clause (6), items (i) to (vi) and (viii), and the provision of these taxable services, unless specifically provided otherwise....

When the sales transaction involves other applicable taxes, besides sales/use tax, which party (marketplace facilitator/provider or marketplace seller) should be responsible to collect?

Marketplace providers are only liable for collection of sales and use taxes authorized by Chapter 297A. (Minnesota Statutes 297A.66)

Any other taxes required to be collected would be the liability of the marketplace seller or the purchaser (assuming a statutory use tax requirement).

6. Marketplace seller economic nexus threshold calculation

Should the marketplace seller, in determining whether it has exceeded the state's economic nexus threshold and is obligated to register and collect sales/use tax on its direct remote sales, be able to exclude its facilitated sales (for which the marketplace facilitator/provider is responsible for collecting tax on) and only count its direct remote sales?

Marketplace sellers should include sales facilitated by a marketplace provider when calculating whether they have exceeded the small seller exception, as Minnesota law does not specifically allow for the exclusion.

7. Remote Seller sales/use tax economic nexus threshold issues

Should the remote sellers' sales volume economic nexus threshold be limited only to retail sales, or even further limited to taxable sales?

Minnesota Statutes 297A.66 specifies that the nexus threshold is based on retail sales.

Should the "transactions" economic nexus threshold be eliminated?

Minnesota Statutes 297A.66 specifically includes the transaction threshold.

Thresholds for Collection Obligation for Small Retailers

Either:

(1) makes or facilitates 200 or more retail sales from outside this state to destinations in this state during the prior 12-month period; or

(2) makes or facilitates retail sales totaling more than \$100,000 from outside this state to destinations in this state during the prior 12-month period.

8. Certification requirement

Should states develop a certification process for marketplace facilitator/providers, to establish that they can correctly handle the sales/use tax collection and remittance responsibilities on their facilitated sales?

Marketplace facilitators/providers are subject to the same requirements as their sellers as well as other remote sellers. All are subject to audit, adding a certification requirement would increase the burden of compliance.

How does the marketplace seller know if the marketplace facilitator/provider has collected? Should the marketplace facilitator/provider be required to provide a certification or report to the marketplace seller?

Marketplace sellers receive account sales reports and should be aware of the actions of the marketplace provider applied to their sales.

Providing Software to Remote Retailers

Non SST States

- • Consider addressing most of the issues above by certifying comprehensive software solutions and making them available to remote sellers.